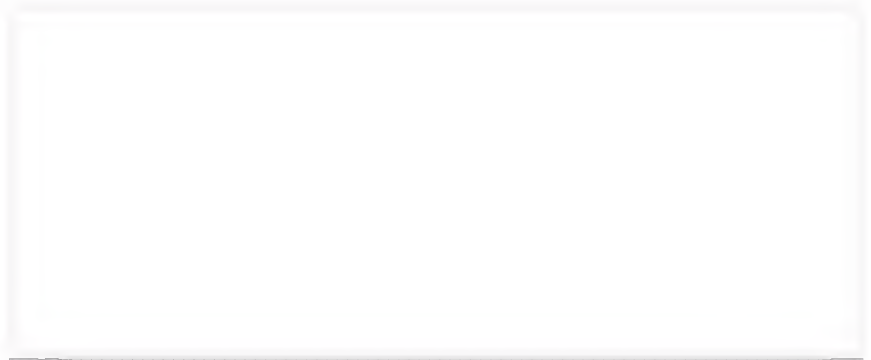




Directorate B
Complaints and Inquiries Unit 3



gavinsblog@gmail.com

Strasbourg, 11 -01- 2013

Complaint 1703/2012/VIK

Dear Mr Sheridan,

On 20 August 2012, you submitted a complaint to the European Ombudsman against the European Central Bank (ECB), concerning its refusal to grant access to a document you requested.

On 3 October 2012, the Ombudsman opened an inquiry into your above complaint and informed you that he considers it useful to inspect the document in question.

On 12 December 2012, we conducted an inspection of the file relating to your complaint at the ECB premises. Please find enclosed a copy of the inspection report.


On 19 December 2012, the European Ombudsman received the ECB's opinion on your complaint (enclosed).

If you wish to make any observations on the opinion, please send them to us before 28 February 2013.

Please note that, if we do not receive any observations from you, the Ombudsman may close the case with a decision, based on the information you have already provided and the ECB's opinion.



Yours sincerely,



Lambros Papadias
Head of Complaints and Inquiries Unit 3

Enclosure:

- Copy of the opinion submitted by the EBC;
- Inspection report.

19 -12- 2012

REPORT ON THE EUROPEAN OMBUDSMAN'S INSPECTION OF FILES

Case reference: 1703/2012/VIK
Name of complainant: Mr Gavin Sheridan
Institution involved: European Central Bank (ECB)
Date: Wednesday, 12 December 2012
Location: Premises of the ECB in Frankfurt
Written confirmation: E-mail from Ms Sandrine Letocart to Ms Violetta DIMOVA of 10 December 2012

Present: a) ECB:
Mr Roman SCHREMSER
Ms Sophie CONSTANT
Ms Sandrine LETOCART

b) European Ombudsman services:
Mr Lambros PAPADIAS
Ms Violetta DIMOVA

The inspection started at 10.30 am.

Mr Roman SCHREMSER welcomed the Ombudsman's representatives. Following a short presentation of the participants, Mr PAPADIAS and Ms DIMOVA explained briefly the purpose of the inspection and the inspection procedure.

Ms CONSTANT then presented two identical folders containing all the correspondence and other pertinent information relating to either initial or confirmatory applications lodged by the complainant (Mr Gavin Sheridan) with ECB.

The ECB representatives then left the room and the Ombudsman's representatives proceeded to an inspection of the following documents:

1. ECB letter dated 19 November 2010 to the Irish Minister of Finance (marked 'Secret').
2. E-mail from the complainant dated 9 December 2011 and the ECB's reply of the same date.
3. Assessment of a request for access to ECB document, dated 6 December 2011 (marked 'ECB Confidential')
4. Letter to the complainant, dated 9 January 2012 (enclosure; ECB letter dated 18 November 2010).
5. E-mail to the complainant dated 12 January 2012.

6. Executive Board decision by written procedure, 8 February 2012 (marked 'ECB Confidential')
7. Note dated 26 January 2012, (marked 'ECB Confidential') legally privileged.
8. ECB letter to the complainant dated 8 February 2012.
9. Extract from the summary proceedings of the 769th Executive Board meeting held on Tuesday, 14 February 2012.
10. ECB e-mail and letter to the complainant, dated 8 February 2012.
11. ECB e-mail to the complainant, dated 20 September 2012.
12. The complainant's access request, dated 9 December 2012.
13. ECB letter, dated 2 November 2010, to the Irish Finance Minister (ECB opinion on the extension of the Irish state guarantee of certain liabilities of credit institutions)
14. Opinion of the ECB of 2 November 2010, on the extension of the Irish state guarantee of certain liabilities of credit institutions.
15. Letter to the complainant, dated 15 October 2012, on public access request for ECB documents (marked 'ECB-unrestricted').
16. Letter to the complainant, dated 21 November 2012, on public access request for ECB documents (marked 'ECB-unrestricted').
17. Letter to the complainant dated 28 September 2012, on public access request for ECB documents (marked 'ECB-unrestricted').

When the Ombudsman's representatives reviewed the above-listed documents, they telephoned the ECB representatives, who returned to the inspection room. Mr PAPADIAS noted that he found of particular interest for the Ombudsman's inquiry, the letter ECB had sent recently to the complainant (see point 16 above), dated 21 November 2012 (ECB-unrestricted). He asked for a copy of this document. It was agreed that Ms CONSTANT will sent this non-confidential document to Ms DIMOVA by e-mail. She did that following the inspection.

The Ombudsman's representatives thanked ECB for having organised a complete file, which gave them an opportunity to see how the various request for access submitted by Mr Sheridan were handled by the ECB staff.

The inspection finished at 12.30 am.

Brussels, 19 December 2012

Mr Lambros PAPADIAS

Ms Violetta DIMOVA

Mario DRAGHI
President

ECB-UNRESTRICTED

Mr. P. Nikiforos Diamandouros
European Ombudsman
1, avenue du Président Robert Schuman
67001 Strasbourg
France

Frankfurt am Main, 18 December 2012

Re: Complaint 1703/2012/VIK lodged by Mr Sheridan

Dear Mr Diamandouros,

I refer to your letter of 3 October 2012 informing the European Central Bank (ECB) that an enquiry is being conducted following a complaint for maladministration lodged with the European Ombudsman concerning the ECB's decision to refuse access to a particular ECB document.

Following a brief summary of the public access requests that form the background to the complaint, I will herewith provide the ECB's opinion on the complainant's allegations, as requested in your letter.

On 9 December 2011 Mr Gavin Sheridan requested access to "*any and all communications from the ECB addressed to the Irish Finance Minister (or his direct office) in the month of November 2010*". The ECB identified two documents falling within the scope of the request, namely two letters, dated 18 November 2010 and 19 November 2010 respectively, from the President of the ECB to the Irish Finance Minister. The ECB responded to the request on 9 January 2012¹ by disclosing the letter of 18 November 2010, but denying access to the letter of 19 November 2010.

In order to enable the complainant to ascertain why the letter of 19 November 2010 could not be disclosed, the ECB's response described the content and the purpose of the letter of 19 November 2010. The response concluded that, in line with the principle that it is in the public interest for the ECB to be in a position to have a candid communication with national authorities in fulfilling its mandate, and considering the content and purpose of the letter of 19 November 2010, the disclosure of the letter would undermine the protection of the public interest as regards the monetary policy of the European Union

¹ See the letter from the Director General Secretariat and Language Services of 9 January 2012.

and the stability of the financial system in a Member State. Therefore, access to the letter of 19 November 2010 had to be denied, in accordance with the second and seventh indents of Article 4(1)(a) of Decision ECB/2004/3 of 4 March 2004 on public access to European Central Bank documents.²

The complainant submitted a confirmatory application on 12 January 2012. After thorough examination of the complainant's request, the Executive Board decided, on 8 February 2012³, to confirm the assessment and the decision set out in the letter from the Director General Secretariat and Language Services of 9 January 2012.

Following your letter of 3 October 2012, and after re-examination of the letter of 19 November 2010 and the decision not to disclose it – as set out in the ECB's responses of 9 January and 8 February 2012 and the related assessments – the Executive Board is of the view that the complainant's allegations that the ECB had *"wrongly refused access to its letter dated [19⁴] November 2010 addressed to the Irish Minister of Finance"* and that the ECB should, on the contrary, *"grant [full] access to this letter"* are unfounded, for the reasons outlined below.

First, the Executive Board confirms its previous assessment that the letter of 19 November 2010 cannot be disclosed, in accordance with the second and seventh indents of Article 4(1)(a) of Decision ECB/2004/3.

The letter of 19 November 2010, to which access was requested, is a strictly confidential communication between the ECB's President and the Irish Finance Minister. It was sent in the context of significant market pressure and extreme uncertainty on the prospect of the Irish economy, with substantial spillovers for the financial stability in the euro area as a whole. The purpose of this letter was to protect both the integrity of the ECB's monetary policy and the stability of the Irish financial system, in the interests of euro area citizens.

The letter of 19 November 2010 expressed the concerns of the ECB's Governing Council regarding the extraordinarily grave and difficult situation faced by the Irish financial sector at the time and its impact on the stability of the Irish financial sector as a whole. It also invited the Irish government to take swift and bold action in order to address those concerns. In line with the messages which it has consistently delivered to the public, the ECB encouraged the Irish government to commit to taking decisive action in the areas of fiscal consolidation, structural reform and financial sector restructuring, including the recapitalisation of banks where necessary. Similarly, the ECB also asked for reassurance that the Irish government would take the necessary action to ensure that the balance sheet of the

² A consolidated version of the Decision is available at: <http://www.ecb.europa.eu/ecb/legal/pdf/02004d0003-20110618-en.pdf>

³ See the letter from the ECB's President of 8 February 2012.

⁴ The reference in your correspondence to a letter of 18 November 2010 must be a typographical error, as the complaint clearly refers to the non-disclosure of a letter of 19 November 2010.

Central Bank of Ireland remained protected, in line with the principle that liquidity could only be provided against adequate collateral.⁵

It is of crucial importance that the ECB be in a position to convey pertinent and candid messages to European and national authorities in the manner judged to be the most effective to serve the public interest as regards the fulfilment of its mandate. If required, and in the best interests of the public, also effective informal and confidential communication must also be possible and should not be undermined by the prospect of disclosure.

In line with this principle, and considering the content and purpose of the letter of 19 November 2010, as well as the context in which it was sent, the Executive Board is of the view that disclosure of the letter, even partially, would undermine the protection of the public interest as regards the monetary policy of the European Union and the stability of the financial system in a Member State. Therefore, access to the letter of 19 November 2010 must be denied under the second and seventh indents of Article 4(1)(a) of Decision ECB/2004/3. For the reasons stated above, the ECB confirms its decision not to grant access to this letter.

Second, as demonstrated by the procedural history of the dossier outlined above, the ECB responded to the complainant's public access requests in a very diligent manner and in full compliance with the principles of good administration and, thus, in line with the standards of behaviour that citizens of the European Union can expect from their institutions.

With regard to the reasons justifying the refusal, reference is made to the case law of the Court of Justice of the European Union, according to which the obligation to state reasons has two purposes: (i) to enable the persons concerned to ascertain the reasons for the measure, so as to enable them to protect their rights; and (ii) to enable the European Union judicature to exercise its power to review the legality of the decision.⁶ Whether a statement of reasons satisfies those requirements is a question to be assessed on a case-by-case basis, with reference not only to its wording, but also to its context and the whole body of legal rules governing the matter in question.⁷ Therefore, it is not necessary, for the reasons provided, to detail all the relevant facts and points of law. In the present case, the ECB

⁵ See the letter of 21 November 2012 from the ECB's President to the complainant. This letter communicates the Executive Board's decision with regard to the applicant's confirmatory application in the context of a further public access request submitted on 20 August 2012. The scope of the further public access request also encompassed the letter of 19 November 2010. The fact that, in its response of 21 November 2012, the ECB gave a more detailed account of the content of the letter of 19 November 2010, demonstrates that the ECB, also in cases where it concludes that a document cannot be disclosed, systematically reassesses the level of information it can provide without undermining the public interest protected by Decision ECB/2004/3.

⁶ See Cases C-266/05 *P Sison v Council* [2007] ECR I-1233, paragraph 80; C-350/88 *Delacre and Others v Commission* [1990] ECR I-395, paragraph 15; T-362/08 *IFAW Internationaler Tierschutz-Fonds GmbH v Commission* paragraph 109; Joined Cases T-355/04 and T-466/04 *Co-Frutta v Commission* [2010] ECR II – 1, paragraph 99; T-105/95 *WWF UK v Commission* [1997] ECR II-313, paragraph 66.

⁷ See Cases C-122/94 *Commission v Council* [1996] ECR I-881, paragraph 29; C-41/00 *P Interporc v Commission* [2003] ECR I-2125, paragraph 55; T-188/98 [2000] *Kujer v Council* ECR II-1959, paragraph 36; Joined Cases T-355/04 and T-466/04 *Co-Frutta v Commission* [2010] ECR II-1, paragraph 100.

considers that the reasons given in the letters of 9 January and 8 February 2012 satisfy the above requirements.

Finally, reference is made to the established case law of the Court of Justice of the European Union, according to which the institutions of the European Union enjoy wide discretion in assessing whether the disclosure of documents covered by the mandatory exceptions of Article 4(1)(a) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents would undermine the public interest protected and that the judicial review is limited to verifying “whether the procedural rules and the duty to state reasons have been complied with, whether the facts have been accurately stated, and whether there has been a manifest error of assessment or a misuse of powers”.⁸ The General Court has explicitly acknowledged that the ECB must be recognised as enjoying wide discretion when assessing whether the disclosure of the requested documents would undermine the protection of the public interest as regards the financial, monetary or economic policy of the European Union or of a Member State under the second indent of Article 4(1)(a) of Decision ECB/2004/3 which is a mandatory exception similar to that under the fourth indent of Article 4(1)(a) of Regulation (EC) No 1049/2001.⁹ With regard to the complaint in question, the ECB considers that it has complied fully with the applicable procedural rules, including the duty to state reasons for its decision, and that its assessment of the public interest is tainted neither by a manifest error of assessment nor by a misuse of powers.

I trust that these additional explanations and clarifications demonstrate that, in refusing access to the letter of 19 November 2010, the ECB acted in full compliance with the applicable public access framework, as well as with the principles of good administration.

Yours sincerely,



Encl.:

Letter from the Director General Secretariat and Language Services of 9 January 2012

Letter from the ECB's President of 8 February 2012

Letter from the ECB's President of 21 November 2012

⁸ See Case T-362/08 *IFAW Internationaler Tierschutz-Fonds GmbH v European Commission*, paragraphs 104 to 107, 124, 136 which refers to the protection of the economic policy of a Member State; and Case C-266/05 *P Sison v Council* [2007] ECR 1233, paragraphs 35 and 64, which refers to the protection of public security and international relations. Case T-204/99 *Mattila v Council and Commission* [2001] ECR II-2265, paragraph 59.

⁹ See Case T-590/10 *Gabi Thesing and Bloomberg LP v European Central Bank* [2012], paragraph 43.



EUROPEAN CENTRAL BANK
EUROSYSTEM

Pierre VAN DER HAEGEN
Director General
DG Secretariat & Language Services

Mr Gavin Sheridan

ask+request-34-b9a2f68c@asktheeu.org

9 January 2012

LS/PvdH/12/3

Public access to ECB documents

Dear Mr Sheridan,

On 9 December 2011, the European Central Bank (ECB) received your request for access to “*any and all communications from the ECB addressed to the Irish Finance Minister (or his direct office) in the month of November 2010*”.

We would like to inform you that during the month of November 2010, the ECB sent two letters from the ECB President to the Irish Finance Minister and no communication was sent to his direct office.

The first letter, dated 18 November 2010, concerns the consultation of the ECB by national authorities on the national implementation of Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit claims.

Following a thorough assessment of this letter, in line with the requirements established by the Decision of the European Central Bank of 4 March 2004 (ECB/2004/3) on public access to European Central Bank documents, there are no grounds for refusing access to it and therefore it is disclosed to you in full (see attachment).

The second letter, dated 19 November 2010, is a strictly confidential communication between the ECB President and the Irish Minister of Finance and concerns measures addressing the extraordinarily severe and difficult situation of the Irish financial sector and their repercussions on the integrity of the euro area monetary policy and the stability of the Irish financial sector.


Following a thorough assessment of the letter, in line with the requirements established by the Decision ECB/2004/3 on public access to European Central Bank documents, the ECB cannot grant access to this document since the disclosure of its content beyond what is described above would undermine the protection of the public interest as regards the monetary policy of the Union (second indent of Article 4(1)(a) of ECB Decision on public access) and as regards the stability of the financial system in a Member State (seventh indent of Article 4(1)(a) of ECB Decision on public access).

The ECB must be in a position to convey pertinent and candid messages to European and national authorities in the manner judged to be the most effective to serve the public interest as regards the fulfilment of its mandate. If required and in the best interest of the public also effective informal and confidential communication must be possible and should not be undermined by the prospect of publicity. In this case, the confidential communication was aimed at discussing measures conducive to protecting the effectiveness and integrity of the ECB's monetary policy and fostering an environment that ultimately contributes to restoring confidence among investors in the overall solvency and sustainability of the Irish financial sector and markets, which, in turn, is of overriding importance for the smooth conduct of monetary policy.

We should like to draw your attention to the fact that in line with Article 10 of the ECB Decision on public access to ECB documents (ECB/2004/3) "documents released shall not be reproduced or exploited for commercial purposes without the ECB's prior specific authorisation. The ECB may withhold such authorisation without stating reasons."

Moreover, for the sake of good order, we would like to inform you that in line with Article 7.2 of the ECB Decision on public access "in the event of total or partial refusal, the applicant may, within 20 working days of receiving the ECB's reply, make a confirmatory application asking the ECB's Executive Board to reconsider its position".

With kind regards,



Pierre van der Haegen
Director General Secretariat & Language Services



Roman Schremser
Head of Secretariat Division



EUROPEAN CENTRAL BANK

EUROSYSTEM

Jean-Claude TRICHET

President

Mr Brian Lenihan

Tánaiste and Minister for Finance

Department of Finance

Government Buildings

Upper Merrion Street

Dublin 2

Ireland

18 November 2010

L/JCT/10/1439

Dear Minister,

The ECB has recently been informally asked by some national authorities whether the ECB should be consulted on the national implementation of Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit claims¹.

In its advisory function, the ECB stands ready to respond to any formal or informal voluntary national consultations that you may wish to initiate and offer guidance on the transposition measures prepared for Ireland, even if there is no formal obligation to consult, which is the case.

Article 1(2) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions² does not formally oblige national authorities to consult the ECB if the exclusive purpose of draft national legislative provisions is the transposition of EU Directives.

As you know, the ECB seeks to promote proactively a harmonised EU-wide implementation of Directive 2009/44/EC in the legislation of the Member States in order to foster maximum transparency and legal

¹ OJ L 146, 10.6.2009, p. 37.

² OJ L 189, 3.7.1998, p. 42.

certainty for the closely connected payment and securities settlement systems and to ensure a level playing-field throughout the European Union. The ECB would therefore see merit if national implementation measures are shared with the ECB before adoption, as a way to facilitate consistency among Member States and a level playing field in this area. The ECB as a central point would be able to compare national implementation measures, alert in cases of inconsistencies, and recommend best practices throughout the Union.

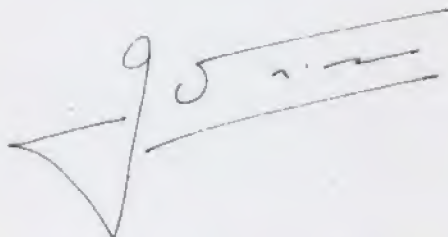
The interest of the ECB is based on the importance of Directive 2009/44/EC for the promotion of the smooth operation of payment systems in the Union and for the mobilisation of additional types of collateral in credit operations. The implementation of the following aspects of Directive 2009/44/EC is of particular importance to the ECB:

(1) as regards the amendments to the Settlement Finality Directive, the protection of night-time settlement and interconnected systems owing to the expected increase in system interoperability, inter alia in line with the Markets in Financial Instruments Directive and the European Code of Conduct for Clearing and Settlement, considering that these changes are crucial to TARGET2-Securities (T2S)³ and TARGET2⁴;

(2) as regards the amendments of the Collateral Directive, the mobilisation of credit claims as collateral for credit operations in order to facilitate their use throughout the Union, considering that such collateral is important for the counterparties of Eurosystem monetary policy operations.

In any case, in view of the imminent finalisation of the transposition process in Ireland, I would also like to kindly refer to ECB Opinion CON/2008/37 of 7 August 2008 on the proposal for a directive amending Directive 98/26/EC and Directive 2002/47/EC⁵, which may be helpful for the Department of Finance when transposing Directive 2009/44/EC into national law.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J. J. Le Maire', with a stylized flourish at the end.

³ T2S will be a single IT platform for settling almost all securities in Europe, eliminating substantial differences between the settlement of domestic and cross-border transactions.

⁴ TARGET2 (Trans-European Automated Real-time Gross settlement Express Transfer) is the Eurosystem's interbank funds transfer system, which is designed to support the Eurosystem's objectives of defining and implementing the monetary policy of the euro area and promoting the smooth operation of payment systems, thus contributing to the integration and stability of the euro area money market.

⁵ OJ C 216, 23.8.2008, p. 1.



EUROPEAN CENTRAL BANK
EUROSYSTEM

Mario DRAGHI
President

Mr Gavin Sheridan
ask+request-34-b9a2f68c@asktheeu.org

ECB-CONFIDENTIAL

LS /MD/12/84

8 February 2012

Public access request for ECB documents

Dear Mr Sheridan,

On 12 January 2012, the ECB received your confirmatory application for access to the ECB letter to the Irish Finance Minister dated 19 November 2010.

I should like to inform you that the Executive Board has thoroughly considered your request and your supporting arguments in line with the requirements established by the Decision ECB/2004/3 on public access to European Central Bank documents. The Executive Board herewith confirms the assessment and the decision of the DG/SL (laid down in his letter of 9 January 2012), i.e not to grant access to this document since the disclosure of its content, even partially, would undermine the protection of the public interest as regards the monetary policy of the Union (second indent of Article 4(1)(a) of ECB Decision on public access) and as regards the stability of the financial system in a Member State (seventh indent of Article 4(1)(a) of ECB Decision on public access).

As emphasised by the Director General Secretariat and Language Services (DG/SL) in his letter dated 9 January, the letter to the Irish Finance Minister, is a strictly confidential communication from the ECB President to the Irish Minister of Finance expressing the ECB's Governing Council's concerns about the then extraordinarily severe and difficult situation of the Irish financial sector and their repercussions on the stability of the Irish financial sector and inviting the Irish government to take swift and bold action in order to address those concerns. With this letter, the ECB aimed at protecting the integrity of its monetary policy and the stability of the Irish financial system in the interest of the euro area citizens.

ECB-CONFIDENTIAL

The letter was sent in the context of significant financial market pressure and extreme uncertainty on the prospect of the Irish economy, with substantial spillovers for the financial stability in the euro area as a whole. The confidential communication was aimed at discussing measures conducive to protecting the effectiveness and integrity of the ECB's monetary policy and fostering an environment that ultimately contributes to restoring confidence among investors in the overall solvency and sustainability of the Irish financial sector and markets, which, in turn, is of overriding importance for the smooth conduct of monetary policy.

The ECB must be in a position to convey pertinent and candid messages to European and national authorities of the euro area in the manner judged to be the most effective to serve the public interest as regards the fulfilment of its mandate. If required and in the best interest of the public also effective informal and confidential communication must be possible and should not be undermined by the prospect of disclosure.

For the sake of good order I should like to inform you that in line with Article 8(1) of the Decision ECB/2004/3 on public access to ECB documents in the event of total or partial refusal, the applicant may have recourse to the remedies open to him/her in accordance with Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Mario Monti', with a stylized, cursive script.

Mario DRAGHI
President

ECB-UNRESTRICTED

Mr Gavin Sheridan
ask+request-205-6c39f0b2@asktheeu.org

21 November 2012

Public access request for ECB documents

Dear Mr Sheridan,

We refer to your confirmatory application of 31 October 2012 in which you ask for a review of our handling of your initial request, filed on 20 August 2012, for access to the European Central Bank's (ECB) documents, namely: *"(1) all communications between the ECB and the Irish Finance Ministry in October and November 2010 [...] at any level [...]; (2) all letters communicated to the Irish Finance Minister or his Ministry by the ECB in the years 2009, 2010 and 2011"*.

The ECB responded to your initial request on 15 October 2012 by: (i) identifying the documents falling within the scope of the request; (ii) disclosing some of these documents; and (iii) providing you with an individual assessment of the reasons for refusing access, where other documents could not be disclosed under the Decision of the European Central Bank of 4 March 2004 (ECB/2004/3) on public access to European Central Bank documents.

The Executive Board has considered your confirmatory application, as well as the assessment made and the decision taken with respect to the response to your initial application. Following this review, the Executive Board confirms the decision of the Director General Secretariat and Language Services of 15 October 2012 for the reasons specified therein.

The letter of 15 October 2010 (and not of 13 October as was erroneously stated in our previous letter – see the third point below) from the ECB's President to the Irish Finance Minister expressed the ECB's appreciation for the Irish government's commitment to developing a multi-annual economic and fiscal adjustment strategy. It also recalled the rules to which Eurosystem credit operations are subject, as well as the role of the ECB's Governing Council in monitoring the provision of emergency liquidity assistance, in particular in the case of large liquidity provisions given to some entities, as this may interfere with the objectives and tasks of the Eurosystem and the prohibition of monetary financing under the Treaty on the Functioning of the European Union (the Treaty).

The letter of 4 November 2010 from the Irish Finance Minister to the ECB expressed the Irish government's concerns about the very adverse financial market developments at that time, in relation to the widening of the spread of Irish government bonds vis-à-vis German Bunds and its possible impact.

The letter of 19 November 2010 expressed the concerns of the ECB's Governing Council regarding the extraordinarily grave and difficult situation faced by the Irish financial sector at the time, and its impact on the stability of the Irish financial sector as a whole. The letter also invited the Irish government to take swift and bold action in order to address those concerns. In line with the messages which it has consistently delivered to the public, the ECB encouraged the Irish government to commit to taking decisive action in the areas of fiscal consolidation, structural reform and financial sector restructuring, including the recapitalisation of banks where necessary. Similarly, the ECB also asked for reassurance that the Irish government would take the necessary action to ensure that the balance sheet of the Central Bank of Ireland remained protected, in line with the principle that liquidity could only be provided against adequate collateral.

In addition to reviewing the assessment made and the decision taken in response to your initial application, the Executive Board wishes to provide you with specific explanations with regard to the points raised in your e-mail of 31 October 2012. We understand, from this e-mail, that your confirmatory application is based on the following points: (i) you consider that the ECB should not have blacked out the names of the staff members who appeared on some of the documents disclosed to you; (ii) you claim that the ECB's response failed to mention four letters exchanged between the ECB and the Irish Finance Minister and that these letters should have been disclosed. These letters comprise (i) the letter of 21 November 2010 sent by the Irish Finance Minister to the ECB and (ii) three other letters – according to your information – sent by the ECB's President to the Irish Finance Minister on 15 October, 4 November and 12 November 2010 respectively.

First, in the absence of any justification from you as to the need for this personal data to be disclosed to you and, in the absence of consent from the relevant people for the disclosure of their personal data, the decision taken by the ECB to black out the names of the ECB staff members, as well as their position and/or contact details that appeared on certain documents disclosed to you (i.e. the letters of 8 July 2010, 1 September 2010 and 26 October 2011) is in full accordance with the ECB's duty to protect personal data under Article 8 of Regulation (EC) No 45/2001,¹ in conjunction with Article 4(1)(b) of Decision ECB/2004/3. This is specified in the ECB's initial response of 15 October 2012 (see also Annex B to the response, boxes 10, 12 and 18).

Second, with regard to the letter dated 21 November 2010 sent by the Irish Finance Minister to the ECB, it is not correct to claim that the ECB failed to mention the existence of this letter in its reply to your initial request for access, as this letter is referred to at the end of the first page of the ECB's response of 15 October 2012.

¹ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

The letter of 21 November 2010 has meanwhile been released by the Irish Ministry of Finance. Since your confirmatory application contains a link to the website where this letter is published in full, we note that this letter is clearly in your possession. Therefore, as the letter of 21 November 2010 sent by the Irish Finance Minister to the ECB has been released into the public domain by the official authority that drafted it, and since this letter is available to you, the Executive Board considers that your request to be granted access to the letter of 21 November 2010 sent by the Irish Finance Minister to the ECB has already been satisfied.

Third, we realise that there was a typographical error in the ECB's initial response, for which we apologise. In the ECB's initial response, the end of the first page should read as follows: "*This concerns the letters from the ECB's President to the Irish Finance Minister dated 15 October 2010...*" (instead of 13 October). It is this letter of 15 October 2010 which was considered in the assessment that led to the decision stated in the ECB's initial response.

Fourth, we understand that a recent press article in an Irish newspaper refers to the existence of letters that are said to have been sent by the ECB's President to the Irish Finance Minister on 4 November and 12 November 2010. In this respect, we confirm that the ECB has no record of such letters. We would like to assure you that our services were specifically instructed to look for these letters upon receipt of your confirmatory application. We only have knowledge of a letter dated 4 November 2010, but this was sent by the Irish Finance Minister to the ECB's President, and not vice versa. The letter of 4 November 2010 sent by the Irish Finance Minister to the ECB's President is referred to at the end of the first page of the ECB's response, and cannot be disclosed, partially or in its entirety, for the reasons mentioned therein.

For the sake of good order, we would like to inform you that, under Article 8(1) of Decision ECB/2004/3, in the event of total or partial refusal, the applicant may have recourse to the remedies open to him/her in accordance with Articles 263 and 228 of the Treaty.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'M. H. G.' or similar, written in a cursive style.